

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 58/Mum/2021 (Assessment Year 2009-10)

ITO-2(1) Room No. 25, B-Wing 6 th Floor, Ashar IT Park Wagle Industrial Estate Thane(West)-400 604.	Vs.	Shri Umakant A. Choudhary 102, Vasant Heights 74, Shanti Park, Mira Road East, Thane-401 107. PAN : AEYPC8009B
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Smita Verma
Date of Hearing	11.10.2021
Date of Pronouncement	12.10.2021

ORDER

This is an appeal by the Revenue wherein the Revenue is aggrieved that the learned CIT-A has reduced the addition for bogus purchase of Rs. 1,532,647/- done @ 100% by the Assessing Officer by sustaining only 12.5% for the AY 2009-10 vide order dated 21.2.2020. Thus deleting Rs. 13,41,066/-.

2. The assessee in this case is engaged into trader in building material. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers, the AO made 100% addition of the bogus purchase

3. Upon assessee's appeal learned CIT-A has noted that the sale has not been doubted. Accordingly placing reliance upon several case laws and up on the facts of the case he sustained 12.5 % disallowance out of the bogus purchases

4. Against above order Revenue is in appeal before the ITAT.

5. I have heard Id Learned Departmental Representative and perused the record. I find that in this case the sales have not been doubted it is settled law

that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in writ petition no 2860, order dated 18.6.2014). In this case the honourable High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However the facts of the present case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. In such situation in our considered opinion on the facts and circumstances of the case the 12.5% disallowance out of the bogus purchases done by the learned CIT-A meets the end of justice. Accordingly I uphold the order of learned CIT-A.

6. In the result, appeal filed by the Revenue stands dismissed.

7. Before parting I may add that if the assessee has filed a cross appeal or cross objection and the same has remained unheard, either party may apply for recall of this order so that the appeals can be heard together.

Pronounced in the open court on 12.10.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 12/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai